

## **REMARKS**

The Office Action mailed October 24, 2003 has been received and the Examiner's comments carefully reviewed. Claims 1-9, 21, 22, 38 and 39 have been allowed. Applicants thank the Examiner for this notification. Claims 10, 11, 13-16 and 23 have been cancelled. Claims 1-9, 17-19, 21, 22, 24, 25, 27-33, and 37-52 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

### **Finality of the Rejection**

The Examiner indicated that the Office Action of October 24, 2003 is final. Applicants respectfully note claims 46-52 were added in the Response dated August 18, 2003. The Examiner did not address pending claims 46-52 in the Office Action of October 24, 2003. Therefore, Applicants respectfully submit that a final rejection is premature and request withdrawal of the finality.

### **Rejections Under 35 U.S.C. §102**

The Examiner rejected claims 17, 19 and 40 under 35 U.S.C. §102(e) as being anticipated by Andersson (U.S. Patent 4,995,383). Applicants respectfully traverse this rejection.

Each of independent claims 17 and 40 related to a support device having first and second sides, and a bridge piece. The Examiner has rejected these claims by characterizing a vertically positioned corrective posture device 1 of Andersson as a nasal strip for a horse. In particular, the Examiner asserts that the span across the nose of a horse varies with age and breed; and that the size of humans also vary, accordingly the corrective posture device 1 of Andersson anticipates claims 17 and 40.

Both claims 17 and 40 recite that the claimed device is for supporting tissue overlying the nasal passages of a horse. The first and second side pieces are applied over [the respective] nasal passages and the bridge piece [is] sized to extend between the side pieces when the side pieces are applied to the nasal passages of a horse.

Andersson does not disclose that the device 1 is applied over nasal passages. Andersson does not disclose that the adjusting means 1a is sized to extend between the

securing end 1b, 1c when the ends are secured to the nasal passages of a horse. Accordingly, Andersson clearly does not disclose the recited limitations of claim 1. Therefore, Andersson cannot anticipate claims 17 and 40 under 35 U.S.C. §102(e). Applicants respectfully submit that this rejection is improper under 35 U.S.C. §102(e); and that independent claims 17 and 40, and dependent claim 19 are patentable.

### **Rejections Under 35 U.S.C. §102**

The Examiner rejected claims 24, 25, 27-33, 37 and 41-45 under 35 U.S.C. §102(e) as being anticipated by Raunig (U.S. Patent 5,817,039). Applicants respectfully traverse this rejection.

Claims 24, 29, 37 and 41 each recite a nasal support device having an adhesive layer for securing the support device to tissues overlying first and second nasal passages. The support device also includes a surface layer and one or more support structures configured to reduce the draw of the support tissues inward toward the nasal passages during respiration.

Raunig discloses a nasal splint system including a nasal splint 6 that is adhered to a person's face with adhesive tape 11, 14. The Examiner asserts that because the splint 6 is taped to a person's nose, the splint would act to restrict the amount of inward draw of the nasal walls.

Claims 24, 29, 37 and 41, however, recite that the one or more support structures are configured to reduce the draw of the supporting tissues inward. The splint 6 of Raunig is not configured to reduce the inward draw of tissues; rather, the splint 6 is configured to merely rest upon the nose bridge and the cheeks. The Examiner is relying upon and asserting that the adhesive tape 11, 14 is the mechanism that reduces the inward draw of tissues. Claims 24, 29, 37, and 41 recite an adhesive layer, however, claims 24, 29, 37 and 41 do not recite that the adhesive layer reduces the inward draw. Instead, the support structures of the nasal device are configured to reduce the inward draw of the tissues. The splint 6 of the Raunig splint system is not configured to reduce the inward draw of the tissues.

Because Raunig does not disclose each and every element (e.g. an adhesive layer to secure the nasal device and a support structure configured to reduce the inward draw of

tissues), Applicants respectfully submit that independent claims 24, 29, 37 and 41, and dependent claims 25, 27, 28, 30-33, and 42-45 are patentable.

### **Rejections Under 35 U.S.C. §103**

The Examiner rejected claims 10, 11, 13-16 and 23 under 35 U.S.C. §103(a) as being unpatentable over Beaudry (WP 97/42918). Applicants respectfully traverse this rejection, however, Applicants have cancelled claims 10, 11, 13-16 and 23 to advance this application to allowance.

### **Allowable Subject Matter**

Claims 1-9, 21, 22, 38 and 39 are allowed. The Examiner objected to claim 18, but indicated that claim 18 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification.

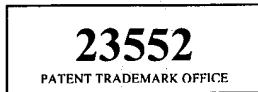
### **Claims 46-52**

Claims 46-52 were previously presented in the Response dated August 18, 2003. Applicants respectfully request that the Examiner provide the disposition of claims 46-52 in the next communication.

### **SUMMARY**

It is respectfully submitted that each of the presently pending claims (claims 1-9, 17-19, 21, 22, 24, 25, 27-33, and 37-52) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

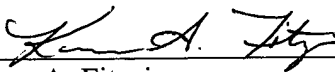
Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.



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Respectfully submitted,

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